

MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, STATE CAPITOL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
<http://www.purchasing.state.ut.us>

Request for ProposalSolicitation Number: **RM3038**Due Date: **11/12/02 at 3:00 P.M.**

Date Sent: October 23, 2002

Agency ContractGoods and services to be purchased: **CONTRACT FOR EMPLOYMENT BACKGROUND CHECKS****Please complete**

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes____ No____. If no, enter where produced, etc._____</p>			
Offeror's Authorized Representative's Signature		Date	
Type or Print Name		Position or Title	

**STATE OF UTAH
DIVISION OF PURCHASING**

Request for Proposal

Solicitation Number: RM3038

Due Date: 11/12/02

Vendor Name:

CONTRACT FOR EMPLOYMENT BACKGROUND CHECKS PER ATTACHED RFP.

QUESTIONS ON SPECIFICATIONS CALL PAUL KIKUCHI AT (801) 965-4071.

QUESTIONS ON PURCHASING PROCESS (NOT RELATED TO SPECIFICATIONS) CALL ROSELLE MILLER AT (801) 538-3232.

RX: 810 36000000073

REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS

1. **PROPOSAL PREPARATION:** (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. (c) Unit price will govern, if there is an error in the extension. (d) Delivery of services as proposed is critical and must be adhered to. (e) Incomplete proposals may be rejected. (f) This proposal may not be withdrawn for a period of 60 days from the due date. (g) Where applicable, all proposals must include complete manufacturer's descriptive literature. (h) By signing the proposal the offeror certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices offered are correct.

2. **SUBMITTING THE PROPOSAL:** (a) The proposal must be signed in ink, sealed, and if mailed, mailed in a properly-addressed envelope to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061. **The "Solicitation Number" and "Due Date" must appear on the outside of the envelope.** (b) Proposals, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section 3-209. (c) **Your proposal will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of proposals to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the proposal for consideration and approval by the Division of Purchasing & General Services (DIVISION). Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose will be paid by the state unless specifically included in the proposal and accepted by DIVISION. (e) By signing the proposal the offeror certifies that all of the information provided is accurate and that he/she offers to furnish materials/services for purchase in strict accordance with the requirements of this proposal including all terms and conditions.

3. **BONDS:** The state has the right to require a bid or proposal bond, payment bond and/or a faithful performance bond from the offeror in an amount not to exceed the amount of the contract.

4. **PROPRIETARY INFORMATION:** Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any proposal will not be considered proprietary. All material becomes the property of the state and may be returned only at the state's option. Proposals submitted may be reviewed and evaluated by any persons at the discretion of the state.

5. **BEST AND FINAL OFFERS:** Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Prior to award, these offerors may be asked to submit best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by a competing offeror.

6. **SAMPLES:** Samples, brochures, etc., when required, must be furnished free of expense to the state and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the offeror's expense.

7. **DIVISION APPROVAL:** Contracts written with the State of Utah, as a result of this proposal, will not be legally binding without the written approval of the Director of the DIVISION.

8. **AWARD OF CONTRACT:** (a) The contract will be awarded with reasonable promptness, by written notice, to the lowest responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made. Refer to Utah Code Annotated 65-56-

21. (b) The DIVISION can reject any and all proposals. And it can waive any informality, or technicality in any proposal received, if the DIVISION believes it would serve the best interests of the state. (c) Before, or after, the award of a contract the DIVISION has the right to inspect the offeror's premises and all business records to determine the offeror's ability to meet contract requirements. (d) The DIVISION will open proposals publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the due date. After the due date, a **register** of proposals shall be established. The **register** shall be open to public inspection, but the proposals will be seen only by authorized DIVISION staff and those selected by DIVISION to evaluate the proposals. The proposal(s) of the successful offeror(s) shall be open for public inspection for 90 days after the award of the contract(s). (e) Utah has a reciprocal preference law which will be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.

9. **ANTI-DISCRIMINATION ACT:** The offeror agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also offeror agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

10. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

12. **GOVERNING LAWS AND REGULATIONS:** All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available on the Internet at www.purchasing.state.ut.us.

Employment Background Investigation

Solicitation #RM3038

1.0 Introduction

1.1 Background

There is a potential for new hire applicants or existing employee's going into sensitive areas to hide a criminal or less than positive background. UDOT is looking for a service that will search ones background for omissions or falsification of information that was noted on the employment consideration form. We estimate there will be approximately 100 – 150 background verifications per year. The contract will be for (1) year with two (2) two-year options.

Questions on specifications contained herein shall be directed to:

Paul Kikuchi, UDOT Purchasing Agent
4501 South 2700 West
Salt Lake City, Utah 84119
Phone (801) 965-4071
Fax Number (801) 965-4073

Expected Contract Type: Requirements Contract

Est. Contract Award Date: November 2002

2.0 Scope of Work

2.1 The Contractor shall provide extensive employment background checks allowable by State and Federal law. Be knowledgeable of State and Federal laws pertaining to this contract and communicate to UDOT areas of non-compliance; thus protecting our users. Background verification will assist in evaluating and establishing the level of risk associated with each candidate. Services may also be used with current employees in, or filling sensitive positions. The Contractor shall provide in a timely response the following up to date and comprehensive information at the time the request is made encompassing all 50 States. Each request UDOT will specifically identify what information will be requested. This will include the following:

2.1.1 Criminal History Records.

Provide criminal records search (felonies and /or misdemeanors) UDOT may choose a search from individual courts, county, multi-county, State or Federal courts.

2.1.2 Social Security Verification

Verify social security number and address history. Identify residential movement; other names used, prior employment, age or year of birth.

2.1.3 Credit Report

Report will include current and past credit history for 7 years, debt load, payment history, any public record information (liens, judgments, bankruptcies), addresses, past and current employers.

2.1.4 Motor Vehicle Records

Driving record report with driving violations, DUI's, accidents and other State provided information.

2.1.5 Education Verification.

Confirms the subject attended an institution as reported, number of years attended, and precise degree received.

2.1.6. Credential Verification

This report will verify a professional certification or license, verifying the license type and number, issuing authority, issue date, expiration date, any disciplinary action, and current status.

2.1.7 Federal Aviation Administration License Verification (FAA)

Confirms pilots license status and rating.

2.2 Reports.

2.2.1 Report requests shall come from multiple locations.

2.2.2 Report information shall be dated in sequential order and be comprehensive, using the most current data available at the time of the request.

2.2.3 Reports shall list locations of the city, county or state, the data covers.

2.2.4 Contractor shall send completed reports to a central location or to the original requester's location.

2.3 Internet Accessibility

2.3.1 Contractor may have Internet accessibility through a web site.

2.3.2 Contractor's site must be a secured site and password protected.

2.3.3 Must have capabilities to "save the file" as it is worked on.

2.3.4 Contractor shall provide notification when the report request is complete or provide an update on the status of reports, explaining what reports are pending and what reports are complete.

- 2.3.5 Once reports are opened, supplier will have the capabilities to save and retrieve files after opening.
- 2.3.6 Internet access 7:00 a.m. to 6:00 p.m. Mountain Standard Time Monday through Friday.

2.4 Service

- 2.4.1 Contractor will have the capability to customize our program to meet specific turnaround times, order and delivery method.
- 2.4.2 Provide training to use the contractors system.
- 2.4.3 Train a group of up to 5 to understand and analyze report information.
- 2.4.4 Contractor will have the flexibility to address special information needs not currently being offered.

3.0 Offeror Questionnaire

The following questions will be used to determine a supplier which best meets UDOT's needs. Provide short, concise answers to the following questions, a maximum of a ½ page per answer or less is required, with exception to 3.3.1 and 3.5.1.

3.1 Pricing

- 3.1.1 Does your company provide discounts for volume, contract length, or other criteria?
- 3.1.2 Does your company charge for a change order request after the request has been submitted? If you answered yes, is there a time limit after submitting the request before a charge is assessed? What is the amount of the charge?
- 3.1.3 Provide complete pricing and completion times (completion time is when the customer furnishes you with the request through the time when a completed report is available or sent to the customer). Provide total pricing for each of the categories below:

- A. Criminal History Records.
As defined in 2.1.1

Description	Response Time	Standard Charge	Expedite Response Time	Expedite Charge
County				
Statewide				
Federal				

B. Social Security Verification
As defined in 2.1.2

Description	Response Time	Standard Charge	Expedite Response Time	Expedite Charge
Social Security				

C. Credit Report
As defined in 2.1.3

Description	Response Time	Standard Charge	Expedite Response Time	Expedite Charge
Credit Report				

D. Motor Vehicle Records
As defined in 2.1.4

Description	Response Time	Standard Charge	Expedite Response Time	Expedite Charge
Motor Vehicle Report				

E. Education Verification.
As defined in 2.1.5

Description	Response Time	Standard Charge	Expedite Response Time	Expedite Charge
Education Verification				

F. Credential Verification
As defined in 2.1.6

Description	Response Time	Standard Charge	Expedite Response Time	Expedite Charge
Credential Verification				

G. Federal Aviation Administration License Verification (FAA)
As defined in 2.17

Description	Response Time	Standard Charge	Expedite Response Time	Expedite Charge
FAA Pilots License				

3.1.4 Does your company have any annual subscription, renewal or enrollment, charge other than what is listed in 3.1.3

3.1.5 Will your company allow, and only charge for, specific reports requested without having to purchase a group, package or set amount of reports?

3.2 Ease of Usage and Processing

This shall encompass all areas from the beginning of the data entry through the billing of the report(s) requested. Ability for the end user to use with ease, but not limited to the following: Providing required preliminary information; this shall include the proper forms and procedures to receive a completed report. Ease of data entry, access to the Contractors system or starting point, changes after submitting the request, following the progress of the report, timeliness, accessing the report, ease of reading what appears on the report and payment of reports. Supply a demo or temporary password access to your company to enable UDOT to submit and receive (3) trial reports.

3.3 Services Provided

3.3.1 Provide and describe the background check reports you offer (maximum 3 pages; excluding full sample reports). Include the types of information captured or verified, sources of data, methods of retrieval, and a full sample report(s).

- 3.3.2 Can you provide municipal, county, state repository, and federal court criminal searches for all 50 States? Identify any States and records your company cannot obtain.
- 3.3.3 Can you provide records for felony and misdemeanor crimes for all 50 States? List any States and records you cannot obtain.
- 3.3.4 What identifiers do you use to match criminal records, (i.e., name social security number, birth date)?
- 3.3.5 What is your procedure for reporting criminal records found on a candidate to your clients? Do you report on pending charges? Will dispositions be included?
- 3.3.6 What are your procedures when you cannot contact an educational institution because of spring / summer breaks and / or the education institution is closed?
- 3.3.7 Does your company offer any other services that may be of benefit to UDOT?
- 3.3.8 Does your company have the capability to accept up to five requests simultaneously from the same organization?
- 3.3.9 Can your company offer five separate Internet password accesses to your system with reports going to a central location, and the invoices going to the originator?
- 3.3.10 Explain how your company calculates response time? (when does the clock start and stop?)
- 3.3.11 Explain how your company handles issues on delayed response time?
 - A. Follow through to confirm that all reports requested by UDOT have successfully been filled.
 - B. Do you offer billing concessions for late reports?
- 3.3.12 List your hours of accessible service?
 - A. Hours that your Customer Service representatives are available.
 - B. Internet access.
 - C. Reports available for review
- 3.3.13 What are your procedures / actions you initiate when you receive a complaint of unsatisfactory performance.

- 3.3.14 Provide examples of other types of reports available (ie. Criminal hits, turnaround time reports, etc. Are there charges for these reports?
- 3.3.15 Does your company have the capabilities to provide the name of a “County”, based on the City and State information provided in a criminal background check?
- 3.3.16 How long do you store completed background check reports? How long will they be accessible to UDOT?

3.4 Compliance

- 3.4.1 Is your company in compliance with the Fair Credit Reporting Act?
- 3.4.2 Explain how your company would assure compliance with industry requirements for background checks.
- 3.4.3 Does your company require a copy of the applicant’s signed authorization / release form to perform a background check and do we retain it? If so, do you require the use of a specific form? (if yes, please provide a sample)
- 3.4.4 How does your company handle adverse action issues, under the Fair Credit Reporting Act?
- 3.4.5 How do you handle issues surrounding a candidate’s disagreement with the information your company reports.
- 3.4.6 Has your company ever been sued for non-compliance or any other reason directly related to providing employment background checks? Please explain and provide outcome.
- 3.4.7 Explain how your company is compliant with Federal and Utah State laws that pertain to background investigations.

3.5 Offeror Questioner/Company Background:

- 3.5.1 Provide a brief statement (maximum of 1 page) of your company’s history and philosophy as well as your corporate strategy. Include in your response the number of employees, company locations, and contact information for submitting requests, and the volume of requests filled in the last calendar year.
- 3.5.2 Explain what is unique about your company, products & services and sets it apart from your competition.

- 3.5.3 Provide 3 government accounts with similar volume to this request. In your information include an agency contact, and telephone number.
- 3.5.4 Do you carry professional liability insurance? What is the amount of the policy? Have you ever had a claim against this policy?
- 3.5.5 Does your company have web-based ordering and retrieval of completed background checks?
- 3.5.6 Will you notify UDOT when all reports in the request are completed?
- 3.5.7 Can your systems accommodate UDOT management monitoring background checking requests from satellite offices?

3.6 Quality Control and Data Security

- 3.6.1 What are your internal control procedures and policies to assure accurate data is received by you such as reporting of applicant history, especially with criminal records;
- 3.6.2 What measures has your company taken to assure confidentiality of data entering and exiting your business?
- 3.6.3 What is your policy and procedures regarding reporting of incorrect information?
- 3.6.4 Describe your data security procedures to keep reports confidential?

4.0 Proposal Evaluation and Selection Procedures

- 4.1 Objective** – The objective of the proposal evaluation and selection process is to select the offeror whose proposal has the highest degree of credibility and whose performance can be expected to best meet the State’s requirements at an affordable cost.
- 4.2 Initial Evaluation** – Each proposal will first be evaluated against the mandatory proposal requirements. Proposals that fail to comply with mandatory requirements will be rejected and will receive no further consideration.
- 4.3 Detailed Evaluation** – A detailed scoring evaluation will be conducted for those proposals that have passed the initial evaluation. The scoring evaluation will be accomplished in a consistent and uniform manner for all proposals. An evaluation committee shall be established. Members of the committee will score each proposal according to pre-established evaluation criteria and weights for relative importance. Scores

from each committee member will be combined into a composite score for each offer.

4.4 Evaluation Committee – The committee will be composed of at least three members from UDOT.

4.4.1 Proposals should be prepared simply and economically, providing a straightforward and concise description of the response to the request and the capabilities of the offeror. Emphasis should be on completeness and clarity of content.

4.4.2 The State is not liable for any costs incurred by prospective Contractors prior to the issuance of any agreement, contract, or purchase order, and will not pay for information solicited or obtained.

4.4.3 A **Pre-Proposal Conference** is not planned.

4.4.4 All technical and general questions, or request for clarification regarding any aspect of the proposal **must be made in writing** via postal mail, e-mail, or fax, and arrive no later than **October 31, 2002**. Requests received after that date may not be considered.

4.4.5 The State reserves the right to amend this RFP at any time prior to the proposal due date. An addendum containing the revisions will be furnished to all prospective firms listed by the Division of Purchasing.

4.5 Evaluation Criteria – The following criteria will be used in the detailed evaluation. The offeror with the best response according to the Evaluation Committee shall receive the highest score for each of the criteria listed below.

4.5.1 40 points: Costs will be evaluated to determine realism, completeness, and reasonableness to ensure all aspects of cost has been considered. The bidder with the lowest initial price for the contract shall receive the highest score for this section.

4.5.2 25 points: Easy of processing, usage, retrieving, invoicing, and understanding information that is received from reports. Samples of your release authorization forms, data input form or Internet access to your company's data entry, access to your finalized reports, ease of understanding report samples provided shall receive the highest score.

4.5.3 16 points: Services Provided
Provide your response to 3.3.1 through 3.3.16

The offerors who provide services as listed, 50-State search of records listed in 2.1.1 through 2.1.7, collection of information, other services, response time, meeting our expectations on handling of late reports, shall receive the highest score in this section.

4.5.4 8 points: Compliance

Provide your response to 3.4.1 through 3.4.7

Compliance with the Fair Credit Reporting Act and Utah State law regarding background checks, resolves disagreements, supports their customers to be in compliance, shall receive the higher score for this area.

4.5.5 7 points: Questionnaire

Provide your response to 3.5.1 through 3.5.7

The offeror who has a background that is viewed to be stable, customer focused and financially protected, shall receive the highest score for this section.

4.5.6 4 points: Quality Control and Data Security

Provide your response to 3.6.1 through 3.6.4.

The offeror providing confidentiality, security of information, accuracy of information, shall receive the highest score for this area.

4.6 Submission of Proposal

4.6.1 In order to be considered for selection, offeror must submit a response using the format specified in this RFP.

4.6.2 Proposals **must** be received by State Purchasing by the due date and time indicated on the cover sheet. Late Proposals will not be accepted.

4.6.3 Each proposal must be submitted to Utah State Purchasing as an **original with 5 copies**. Proposals shall be sent to:

Division of Purchasing and General Services
P.O. Box 141061
150 State Office Building, Capital Hill
Salt Lake City, Utah 84114-1061

RFP reference number and due date must appear on the envelope or box containing your proposal

4.6.4 The State reserves the right to waive any informality in any proposal received, or negotiate changes with the Contractor, if it is in the State's best interest to do so.

4.6.5 The State reserves the right to reject any or all proposals received in response to this RFP.

4.7 Additional Written Response

Contractors whose proposal is determined to meet the requirements of this RFP may be required to make written responses to the evaluation committee to clarify questions or statement of work that the committee may have. Responses will be for the purpose of clarifying requirements, technical/work approach, and other aspects of the proposal. Scoring will be finalized after written responses have been reviewed using the above criteria.

5.0 Contract Award

The State of Utah Division of Purchasing will complete the contract award. The contract will incorporate the offeror's response and the original RFP.

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.
7. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
14. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
15. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

(Revision date: Apr 24, 2002)